

EXHIBIT AR



THE SECRETARY OF EDUCATION
WASHINGTON, D.C. 20202

January 19, 2001

Dear Colleague:

I am writing to call your attention to a serious issue that goes to the heart of our shared mission to ensure equal educational opportunity and to promote educational excellence throughout our nation – the problem of continuing disparities in access to educational resources.

Over the last several years, our nation has embraced the goal of promoting high educational standards for all students and of increasing accountability in public education. Standards-based reform efforts have the potential of greatly improving educational outcomes for all children and of closing achievement gaps between minority and nonminority students. There is also evidence that the adoption of state standards and measures to hold schools accountable against those standards is generating public support for increased spending on our schools.

However, the movement toward standards and accountability will only succeed if we ensure that all children have full and equal access to the educational resources necessary to achieve high standards. Indeed, raising standards without closing resource gaps may have the perverse effect of exacerbating achievement gaps and of setting up many children for failure.

In particular, I am concerned about long-standing racial and ethnic disparities in the distribution of educational resources, including gaps in access to experienced and qualified teachers, adequate facilities, and instructional programs and support, including technology, as well as gaps in the funding necessary to secure these resources. Despite important progress, evidence shows that disparities in access to these educational resources remain -- with too many minority children isolated in schools and school districts with far too little opportunity.

These persistent disparities raise serious educational concerns, limiting the ability of children, and our nation, to reach their full potential. In some cases, these disparities may also raise legal concerns under our nation's civil rights laws. Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race or national origin in the provision of educational benefits by recipients of federal financial assistance. Several recent court decisions have held, and it has long been the position of the United States, that where a state acts to provide or regulate the provision of educational resources, the state is responsible under Title VI to act in a nondiscriminatory manner.

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I know that, as a state leader in education, you share my concerns regarding continuing resource gaps in education. This letter is intended to provide you with some important information regarding racial and ethnic disparities in access to educational resources and to help you more closely examine these issues within your state. I have enclosed a summary of some of the research and preliminary data on current disparities in resources and funding. I have also enclosed a summary of the Title VI standards and of some recent private lawsuits in several states challenging their provision of educational resources.

Evidence Shows that Resource Disparities Exist in Education

A review of some of the existing research and preliminary data indicates that there are substantial disparities between minority and nonminority students, as well as districts with substantial concentrations of minority students and other districts, in terms of their access to key educational resources.

First and foremost, with regard to teachers, students in school districts with a greater percentage of minority students are less likely to have experienced, certified teachers who are teaching in their fields of expertise. For example, in 1998, schools with the highest concentrations of minority students had more than twice the inexperienced teachers of schools with the lowest concentrations of minority students. In addition, schools with high percentages of minority students were four times as likely as schools with low percentages of minority students to hire teachers who were unlicensed in their primary teaching field.

Furthermore, school facilities in districts with higher minority enrollment are generally in worse condition than school facilities in districts with lower minority enrollment. For example, one national study found that schools with greater than 50 percent minority enrollment were significantly more likely than schools with low minority enrollment to have less adequate environmental conditions across seven measures, including lighting, heating, ventilation, air quality, noise control, energy efficiency, and physical security.

In addition, with regard to instructional programs and instructional support, minority students are less likely to have access to key resources, such as computers and quality educational materials. For example, despite some important progress in closing the "Digital Divide," white students have been 20 percent more likely than African American students and about 24 percent more likely than Hispanic students to have access to computers in their schools.

Finally, these disparities in educational resources are reflected in disparities in school funding. For example, preliminary data on the revenue school districts received in 1996-97 indicate that -- when revenue is adjusted to reflect variations in buying power based on the cost of teacher salaries -- in 25 of the 40 states that have school districts with greater than 50 percent minority enrollment, those high-minority districts received less

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total average revenue per pupil from state and local sources than districts with less than 50 percent minority enrollment. Even without adjustments to reflect differences in buying power, high-minority districts received less total average revenue per pupil than low-minority districts in 17 of the 40 states. And higher spending districts typically have greater access to key educational resources.

These resource gaps are likely to be particularly acute in high-poverty schools, including urban schools, where many students of color are isolated and where the effect of the resource gaps may be cumulative. In other words, students who need the most may often receive the least, and these students are often students of color.

Research also indicates that these disparities in resources can affect educational outcomes. For example, studies show students learn more from qualified, experienced teachers. Simply put, these differences matter and may be hindering the learning experience of many minority students.

Title VI Prohibits Discrimination in the Provision of Educational Resources

Title VI prohibits discrimination on the basis of race or national origin by recipients of federal funds, including discrimination in the provision of educational resources. Title VI requires that when a recipient acts it must do so in a nondiscriminatory manner. Thus, to the extent that a state acts to provide educational resources to students, the state is covered by Title VI and must provide such resources in a nondiscriminatory manner.

Significantly, our nation's civil rights laws reinforce sound educational practices. Under Title VI, the central concern is whether all children are being provided an equal opportunity to succeed regardless of race or national origin. Thus, Title VI and its implementing regulations prohibit the different treatment of students based on race and national origin and prohibit policies or practices that have a discriminatory disparate impact by race or national origin. Disparity alone does not constitute discrimination; rather, the existence of a significant disparity triggers further inquiry to ensure that the given policy is educationally justified and that there are no alternative policies that would equally serve the recipient's goal with less disparity.

Several recent private lawsuits are pending against several states alleging, in part, that various state actions in the provision of educational resources violate Title VI or its implementing regulations. The United States has participated in several of these cases as *amicus curiae*, taking the position that Title VI is applicable to these claims, though not reaching the merits of any case. Moreover, several court decisions have affirmed that Title VI applies. These lawsuits challenge various types of state action as being carried out in a discriminatory manner, including the state's direct provision of resources or funding to school districts, the state's establishment of state and local funding formulas, and the state's enforcement, or lack thereof, of state mandates regarding educational resources. Furthermore, these private lawsuits often reference the state's movement

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toward the use of tests for student promotion or graduation. Several cases establish that where a state uses tests for these high-stakes purposes, the state must ensure that all students have an equal opportunity to learn the material being tested.

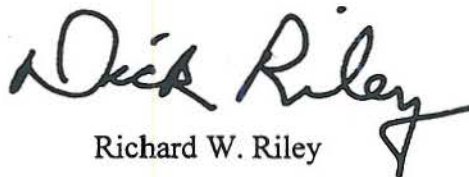
This is an emerging area of the law, and most cases are still in the early stages. Nonetheless, to help you understand the types of state action that have generated litigation, I am enclosing a brief summary of some recent cases.

States Should Examine Their Provision of Educational Resources

In sum, persistent disparities by race and ethnicity in access to educational resources raise important educational concerns and may also raise legal concerns. Given the importance of these issues to children and our nation, I strongly encourage all states to examine their provision of educational resources. That inquiry can help identify inequities, help promote educational achievement, and help the state and its school districts achieve the state's performance standards. Taking the initiative to address these issues may also help avoid costly and lengthy litigation. The challenge of resource disparities in education is one in which all levels of government have a stake, and this Department can help in addressing this vital issue. Nonetheless, in our federal system, state government – in carrying out its education leadership, oversight, and funding roles – has a special responsibility and opportunity to address the challenge.

Thank you for your attention to these issues that are so important to our nation's efforts to ensure that all students have an equal opportunity to achieve high standards. We encourage you to share this information with other decision-makers on education policy in your state so that you can examine together how your state can best promote the educational excellence of all students.

Yours sincerely,


Richard W. Riley

Enclosures